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PART I: FILING APPEALS AND INTERMEDIARY RESPONSE

Rule 1 – Rules Supplement Regulations

The legal authority and general rules for PRRB appeals are at 42 C.F.R. §§ 405.1835 – 405.1889 and are the controlling regulations. These regulations are available at the Board's website at www.cms.hhs.gov/providers/prrb/prrb.asp. Click on regulations.

Rule 2 – Filing an Appeal: General Requirements

2.9 Parties to the Appeal

Only a Provider or group of Providers (or a related organization such as a parent company) is entitled to file an appeal to the Board. A home office is not a Provider. Adjustments made to the home office cost statement can only be appealed by a Provider from a determination made to the Provider's claimed home office costs on the Provider's Medicare cost report.

2.10 Jurisdiction

A. Jurisdictional Requirements

Three requirements must be met for the Board to have jurisdiction over the appeal: it must be filed within 180 days of the determination being appealed; the Provider must be dissatisfied with an Intermediary final determination or failure to issue an NPR; and, the amount in controversy must be at least \$10,000 for an individual appeal and \$50,000 for a group appeal.

B. Dismissal for Lack of Jurisdiction

Cases that do not meet the jurisdictional requirements will be dismissed. A jurisdictional challenge may be raised at any time during the appeal. The parties cannot waive jurisdictional limitations.

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2.11 One Cost Report Year Per Appeal

Generally, a separate appeal must be filed for each cost report year. However, various types of complaints concerning the same cost report year may be included in one appeal. Example: Complaints about both an NPR and a revised NPR for the same year may be combined into one appeal. The 180-day time limit is applied separately to each determination.

2.12 180 Days to File; How to Count

A. Providers have 180 days to file from the date the determination being appealed was received. The Board presumes that the determination was received five days from its mailing date unless evidence of a different date is furnished. The date of receipt or other date that triggers a right to appeal is counted as day zero. If the deadline falls on a federal holiday or weekend, the deadline will be the next business day.

B. If the appeal is based on the Intermediary's failure to timely issue an NPR, the 180-day count starts 12 months after the Provider filed its cost report or, if applicable, an amended cost report. (See 42 C.F.R. § 405.1803(a) for amended cost reports).

C. If the appeal is filed later than 180 days, the Provider must include an explanation to demonstrate that good cause exists for late filing. Administrative oversight generally is not considered good cause. Events beyond the Provider's control, such as floods or fires, may be good cause.

2.13 Mail or Courier; No Faxes; No Emails

A. Filing is complete when the appeal is mailed to the Board. The postmark will determine the mailing date. If the appeal is sent by regular or express delivery through a courier such as UPS or Federal Express, the date the courier accepts the package is the date filed. The Board does not accept faxed filings or electronic mail filings.

B. If a dispute arises over the date of filing, the Provider has the burden of proof. The Board encourages Providers to get a receipt for mail or courier packages sent to the Board and the Intermediary and to put the receipt number on correspondence to the Board. A certified mail return receipt must have a U.S. Postal Service round iron date stamp.

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2.14 Address for Filing

Send your appeal to the following address:

Provider Reimbursement Review Board
2520 Lord Baltimore Drive, Suite L
Baltimore, MD 21244-2670

2.15 Other Parties that Must Receive a Copy of Filing

Send a copy of your appeal to the Intermediary at the same time you send the appeal to the Board. (See Rule 3.4B for additional information that must be sent to the Intermediary with your filing.)

2.16 Individual Appeals and Group Appeals

An appeal by an individual Provider or a group of Providers may be filed. Different procedures apply to each.

Rule 3 – Filing an Individual Appeal – Content and Format

3.2 General

A. To insure that your appeal is complete and to aid the Board in management of a very large caseload, you must use the format in Rules 3.2 through 3.12.

B. Failure to conform to these requirements may result in dismissal of your appeal.

3.2 Identification of Parties

State the following:

- A. Provider's full legal name
- B. Provider's mailing address, telephone number, and fax number
- C. Provider number
- D. Cost report year in dispute

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- E. Provider contact person or designated representative (if any): name, title, mailing address, telephone and fax numbers and email address (See Rule 16 regarding designating a representative and attach the provider's letter designating the representative)
- F. Name of Intermediary. If the Intermediary has changed since the determination being appeal was issued, state both the current and former Intermediaries.

3.3 Statement of Jurisdiction

D. Timeliness

1. Date of Determination: State the date of the determination being appealed (Example: Date of the NPR, date of letter denying exemption). If you are appealing the Intermediary's failure to timely issue an NPR, state the date you filed your cost report or, where applicable, your amended cost report.

Example 1: This is an appeal of adjustments made to the Provider's 12/31/2002 cost report in a September 10, 2003 Notice of Program Reimbursement.

Example 2: This is an appeal of a July 22, 2003 determination that the Provider was not entitled to an exemption from the ESRD composite rate.

E. Dissatisfaction

Give a brief summary of the determination being appealed and the basis for dissatisfaction using the following format:

- 1. NPR or Revised NPR:** If you claim that the basis for the appeal is an adjustment to a cost report, for each adjustment appealed, state the following:
 - a. A short, concise description of the adjustment, including the adjustment number. Attach a copy of the applicable audit adjustment pages.
 - b. If you are appealing from a revised NPR, include with your documentation to the Board the letter requesting reopening, if any, the notice of reopening, and the RNPR, which identifies the adjustments made by the Intermediary.

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Example: Whether adjustment 16 removing \$10,000 of the compensation to each of the Provider's four Board members was proper.

2. Self-Disallowance: If you claim that the item you are appealing was not claimed on the cost report because a regulation, manual, ruling, or some other legal authority stated that the item would not be allowed, then describe the item appealed and the circumstances and the authority that predetermined that the claim would be disallowed. If you protested on the cost report, describe those circumstances.

Example: Whether Medicaid eligible but unpaid claims should have been included in the calculation for DSH. A claim was not made on the cost report because the [cite the regulation or other authority] stated that such item or service would not be allowed.

3. Determination for Status, Exception or Exemption Requests: If you are appealing from a denial of a status, exception or exemption request, state the following:

- a. The determination of status, exception or exemption being appealed and,
- b. The authority under which your claim is made.
- c. Attach a copy of the denial and the Intermediary's transmittal letter, if applicable.

Example: Whether the Intermediary's denial of provider's request for an atypical services exception to the ESRD prospective payment rate under 42 C.F.R. § 413.184 was proper.

4. Failure of Intermediary to Issue NPR: If your appeal is based on the failure of the Intermediary to timely issue an NPR, the deadline for filing the appeal is 12 months plus 180 days after the date of filing the cost report or, if applicable, the amended cost report.

- a. State the date you filed the cost report; and
- b. Describe the circumstances to show that the delay was not the provider's fault. (See 42 C.F.R. § 405.1835(c)).
- c. Attach a copy of the transmittal of the cost report or the certification pages

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Example: Whether the Provider is entitled to have an NPR issued for its 2003 cost report timely filed on [state the date]. The Intermediary has not asked for documentation and the Provider is not aware of any obstacles to issuing an NPR.

- d. If you have not furnished information requested by the Intermediary, state why it has not been furnished.

F. Amount in Controversy

1. State the amount by which the determination(s) you are appealing reduces your Medicare reimbursement for the cost year in issue. Individual appeals must involve disputes of at least \$10,000.
2. The amount in controversy is determined at the date of appeal. If issues are resolved or withdrawn during the pendency of the appeal, it does not deprive the Board of jurisdiction.
3. Appeals of less than \$10,000 must be appealed to the Intermediary. See 42 C.F.R. § 405.1809 et. seq. The Board will accept transfer of a case with more than \$10,000 in controversy that was erroneously filed with the Intermediary provided the appeal meets other jurisdictional and filing requirements set out in these Rules.

3.7 Factual Basis for Appeal

Board Commentary: The regulations at 42 C.F.R. § 405.1841(a) require that the request for Board hearing must identify the aspects of the determination with which the Provider is dissatisfied, explain why the Provider believes the determination is incorrect in such particulars, and be accompanied by any documenting evidence the provider considers necessary to support its position.

The Board has not enforced this requirement for the initial filing in the past. Instead, the particulars and required documentation were submitted in a preliminary position paper filed after the appeal was filed.

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These new rules are designed to produce in the initial appeal filing the information that was formerly in the preliminary position paper. The new rules require the initial appeal to set out the factual and legal basis for claims and to furnish supporting documentation; therefore, the initial filing replaces the preliminary position paper in appeals filed after the effective date of these rules.

A. Material Facts: For each claim made, state, in numbered paragraphs, the material facts that support your claim. For those material facts that you believe the Intermediary may dispute, indicate what documents evidence that fact and where the document is located. (Example: Exhibit B, p 25) See Rule 3.4.B for requirements for filing documentation with your appeal.)

B. Send Supporting Documents to Intermediary Only: If any documents necessary to support your appeal have not been furnished to the Intermediary prior to filing your appeal, such documents are to be sent to the Intermediary simultaneously with the Intermediary's copy of your appeal and a certificate of such service (see Rule 26) is to be appended to the Board's copy of the filing. Supporting documents are NOT to be sent to the Board with the initial filing of the appeal. (But see Rule 13 on filing final position papers with the Board.)

C. Documents to the Intermediary to be Organized, Labeled and Indexed:

1. The documents sent to the Intermediary with your appeal should be well organized to correspond to the facts set out in your narrative under Paragraph 3.4.A, above.
2. Documents must be separated (for example, by numbered tabs) so as to facilitate locating a specific document.
3. Number the pages of each document of two or more pages.
4. If an excerpt from a document is submitted, assure that it is clear what document the excerpt is from.

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5. **Document Index:** Include a list of documents relied upon in your statement of material facts and indicate whether the document is in the Intermediary's possession or, if not, indicate the tab number of the document attached to your appeal.

Example:

DON Job description	Tab 1
Time study 1 st quarter 2002	Tab 2
University of Wisconsin labor study	FI document

G. Inability to Furnish Documents: If supporting documents are not furnished to the Intermediary as provided above, state the cause for failing to submit such documents, including, but not limited to, efforts you have made to obtain the documents and a projection of when and how the documents will be made available. The statement of inability to furnish documents must be signed by an individual with personal knowledge of the facts stated.

3.8 Legal Basis for Appeal

Describe any legal issues in dispute and the authorities on which you rely. You may attach an Appendix containing excerpts of statutes, regulations, cases or other authorities on which you rely.

Example: The manual provision on which the Intermediary relied for the adjustment, PRM section xxx, is inconsistent with the regulation, 42 C.F.R. § xxx because ...

3.9 Requesting Expedited Judicial Review

If an expedited judicial review is requested pursuant to 42 C.F.R. § 405.1842, state the following:

- A. Identify the authority, for example, the statute, regulation or CMS Ruling, that you contend deprives the Board of authority to decide the question and explain why the Board cannot decide the legal issue.
- B. Describe the circumstances sufficiently to demonstrate that there are no material facts in dispute.
- C. State on the cover page of your hearing request in bold letters “**EJR requested.**” (See Rule 33 on requesting EJER after the appeal is filed)

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3.7 Mediation Statement

You may request mediation when you file your appeal. State your position as to why mediation is or is not appropriate for the issues appealed. See Rule 23 for a discussion of Mediation and for requirements for having your case selected for mediation. A request does not insure that your case will be selected. If you are requesting mediation with your initial appeal filing, state on the cover page of your appeal “**Mediation Requested**”. Until a request for mediation is agreed to by the Intermediary and the Board is notified in writing of the agreement, parties must adhere to all due dates.

3.14 Statement of Other Related Cases

A. Include a statement of cases pending before the Board in which the provider is the same or is related to the provider, or the same transaction is at issue.

Example 1: Provider states that it is not aware of any other cases pending before the Board that involve the same or a related provider, or the same transaction at issue in this case.

Example 2: Case No. xxx, ABC Hospital, is related to this case because it involves the same transaction, a merger of provider and another provider corporation into a third corporation.

B. If other related cases are being filed simultaneously but do not yet have a case number assigned, state that, the name of the provider, provider number, fiscal year and the date of filing.

3.15 Disclosure of Related Parties

The provider must furnish a statement as to parent companies or publicly traded companies that own stock in the Provider to enable Board members to determine if a conflict of interest exists that requires recusal.

Examples:

The parent corporation of the provider is xxx.

The following publicly traded corporations own 10% or more of the provider’s stock:

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3.16 Signing the Appeal

An officer of the Provider or a representative designated as provided in Rule 16 must sign the appeal of an incorporated provider. An owner or a designated representative must sign for an unincorporated provider. Under the signature, include the signer's printed name, title or position, mailing and email address, telephone and fax numbers. The person signing the appeal is the only individual with whom the Board will communicate until the provider notifies the Board in writing of a new representative. If the person signing is a designated representative (i.e. not an employee or owner of the Provider), file a copy of the designation with the appeal. (See Rule 16)

3.17 Certificate of Service

Each appeal must contain a certificate, signed by an individual with personal knowledge, that the appeal and documentation as required in Rule 3 have been sent to the Intermediary, the date it was sent and the method of delivery (example: certified mail, Federal Express).

Example:

Certificate of Service

I certify that a copy of this appeal and the documentation as required by Rule 3.4 was sent by [certified mail, return receipt requested/Federal Express], to [state name of Intermediary and the address] on this date.

Signature

Date

3.18 Further responsibilities upon filing

The regulation at 42 C.F.R. § 405.1853 provides that, upon receipt of the Provider's appeal, the Intermediary is to review all relevant information and is to attempt to expeditiously join with the Provider in written stipulations. The Provider is responsible for working in good faith with the Intermediary to reach stipulations within the time for the Intermediary's response.

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Rule 4 – Board Acknowledgement of Appeals & Communications with the Board

4.3 Acknowledgement

You will receive an acknowledgement from the Board indicating that your appeal has been received and a case number assigned.

- A. If your filing does not comply with the filing requirements, the Board may dismiss your appeal.
- B. If the Board finds that your filing substantially complies, but it is deficient in some manner, the Board may require you to cure the defect to perfect your appeal. The Intermediary's time for response will not commence until it receives notice that the Board acknowledges the appeal as being perfected. Sending an Acknowledgement does not limit the Board's authority to require more information if the appeal is later found to be deficient.

4.4 Caption and Case Number on all Papers

All future filings and correspondence with the Board and the Intermediary must contain the caption (names of the provider and intermediary), provider number, fiscal year in issue, and the case number.

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Rule 5 – Intermediary Response to Individual Appeal

5.5 Time for Response

The Intermediary must respond within 60 days from receipt of the Board's acknowledgement (See 42 C.F.R. §405.1853(a)). Without proof to the contrary, the Board presumes receipt five days from the date on the Board's Acknowledgement. If the Provider requests late filing based on good cause, the Intermediary's response does not begin until notice that the Board rules that good cause exists for the late filing.

5.6 Extensions of Time for Intermediary Response

A. The Intermediary's response will be extended:

1. For up to 120 days upon written notice to the Board that the Provider agrees, in writing, to the extension;
2. If the parties agree to mediate, for 30 days after completion of mediation (See Rule 23 on mediation).

B. The Intermediary's response may be extended upon a showing of good cause. Such requests should set out all circumstances including the efforts or progress the Intermediary has made to reach stipulations.

5.7 Intermediary's Responsibilities Upon Receipt of Individual Appeal

A. It is the Intermediary's responsibility to review the Provider's appeal as provided in the regulations at 42 C.F.R. § 405.1853 and to initiate contact with the provider to confer on the stipulations. (See Rules 5.3 & 5.4 Stipulations) The Intermediary is also to confer on whether mediation is appropriate. If the parties agree to mediate, contact the Board promptly for scheduling (See Rule 5.2.A re: mediation affects timetables).

B. If the Intermediary fails to comply with these requirements, the Board may notify CMS that the Intermediary has not met its contract obligations.

5.8 Intermediary Response: Content and Format

The Intermediary shall file a written response containing the following:

H. Statement on Jurisdiction

1. If jurisdiction is not contested, a statement that there are no jurisdictional impediments.

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2. If jurisdiction is challenged, so state and, in a separate legal brief, set out basis for the challenge in detail, including facts and authorities on which the challenge is based. Any documents relevant to the challenge are to be attached (for example, a request for reopening, the notice of reopening, and the relevant pages of the revised NPR).

I. Statement of Compliance with Regulation's Requirement to Confer

1. The response is to include a statement, signed by an individual with personal knowledge of the facts and the authority to enter into stipulations, substantially as follows:

I certify that, upon receipt of the Provider's appeal referenced above, the Intermediary has reviewed the materials submitted by the Provider as well as the information that formed the basis for the Intermediary's determination. The Intermediary has conferred in good faith with the Provider to reach stipulations as required by 42 C.F.R. § 405.1853 by [briefly describe the contacts and conferences].

Name and Title

2. If the Intermediary is unable to make the above certification in good faith, it shall so state and explain why the certification cannot be made. (Example: The Intermediary has been unable to fully review and confer on stipulations because the Provider failed to furnish the documentation as required in Rule 3.4 and the regulations at 42 C.F.R. § 405.1841(a))

J. Stipulations

1. The regulation at 42 C.F.R. § 405.1853 provides that, upon receipt of the Provider's appeal, the Intermediary is to review all relevant information and is to attempt to expeditiously join with the Provider in written stipulations. The Provider is responsible for working in good faith with the Intermediary to reach stipulations within the time for the Intermediary's response.
2. A stipulation is an agreement about any fact that is relevant to the case. Once a matter is stipulated, no further proof of that matter is required and the stipulation becomes part of the record of the case.

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3. Key facts of the case may be stipulated. Background facts, a witness's work or educational history, or procedural history of the case are also typical matters of stipulation. The application of law to the facts may also be stipulated.
4. A stipulation does not necessarily resolve an issue completely nor does it necessarily resolve how the law will be applied to the fact stipulated.

Example 1: The parties stipulate that a transaction was a statutory merger under the laws of Georgia, [thus eliminating the need for proof from a Georgia legal expert but a dispute may remain as to what is the reimbursement effect of the merger.]

Example 2: The parties stipulate that "the Provider meets the requirements for an exception as an atypical Provider under regulation x." [That stipulation does not preclude a challenge to whether the Provider met the second part of the regulatory requirement to show that its excess costs were due to atypicality.]

5. Stipulations may be read into the record or otherwise brought to the Board's attention where the information is helpful context for the Board.
6. Stipulations may be withdrawn only on written motion, and a showing of good cause.

K. Stipulations to be Appended to the Intermediary's Response

1. Stipulations reached before the Intermediary's response is due are to be attached to or set out in the Intermediary's Response.
2. The parties are responsible for continuing efforts to stipulate to other matters as evidence is developed. Stipulations may also be made verbally at any time during the hearing, on the record.

L. Statement on the Status of Claims

The Intermediary's response must include the following:

1. **Resolved Claims:** Identify any claims made in an appeal that are totally resolved and require no further proof. A reference to stipulations is sufficient.

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2. **Conditionally Resolved Claims:** Identify any claims that are conditionally resolved and describe the conditions on which resolution is based, including dates and actions required by the parties. [Example: Issue 1 is conditionally resolved based on Provider's representation that it will furnish documentation requested on travel expenses by June 1, 2004]
3. **Unresolved Claims:** For each claim not resolved,
 - a. Identify which facts listed in the Provider's list of material facts are undisputed and to which the Intermediary will stipulate.
 - b. Referring to the Provider's paragraph numbers in its appeal, state the basis for dispute of the facts listed by the Provider pertaining to the unresolved issue, including identification of documents and authorities on which you rely, or state why the Intermediary cannot agree or disagree with the facts (for example, because of lack of documentation).
 - c. State additional facts the Intermediary contends support its determination and any documents and authorities relied on.
 - a. If the documents relied on were submitted by the Provider, identify the document by tab or exhibit number and page.
 - b. If documents relied on are not part of the Provider's submission, for the Provider's copy of the Response only, attach those documents and follow the procedures in Rule 3.4 A-F. DO NOT attach copies of documents to the response filed with the Board.
 - d. If the claim cannot be resolved because of a question of law, state the Intermediary's legal position and the authorities relied on. Attach a copy of the authorities in an Appendix. Include an index of authorities, separate each by tabs, and number the pages.

M. Signature

The Intermediary's response is to be signed by a representative of the Intermediary.

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N. Certificate of Service

A certificate that conforms to Rule 26 is to be included in the response with service to the Board and the Provider and any other parties.

Rule 6 – Adding a New Issue

6.4 Content and Format

An issue may be added to a jurisdictionally proper appeal by filing a written Notice of Added Issue. The new issue appealed must conform to all of the requirements for filing in Rule 3. The added issue does not have to independently meet the 180-day time limit or the \$10,000 amount in controversy.

6.5 Timeframes

A. The regulations provide that a new issue may be added up until the time of the hearing. Adding a new issue generally will not be considered good cause for delay of the hearing or any other deadlines.

B. All deadlines applicable to the initial appeal will be applicable to the added issue unless the Board instructs otherwise.

C. If the issue is added on or after the date witness lists or other matters required by the Board to be filed are due, a witness list or other matters previously required must also be filed at the same time as the Notice of Added Issue.

D. If an issue is added on or after the date position papers are due, a position paper for the added issue that complies with Rule 13 must also be submitted at the same time the issue is added.

E. The Board will refuse to consider an added issue or it will dismiss an added issue if position papers or other requirements in Rule 6 are not timely met.

6.6 No Board Acknowledgement of Added Issue

The Board does not send written acknowledgement of the addition of issues to an existing appeal.

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Rule 7 – Filing a Group Appeal

7.4 General

A. Group appeals involve at least two providers, a single issue and a single cost report year unless the Board approves a request to include multiple cost report years.

B. A Provider that has an issue in a group appeal may also bring a separate individual appeal for issues not common to the other Providers in the group provided it meets the criteria for an individual appeal in 42 C.F.R. § 405.1841.

7.5 Optional Group Appeals

A group of providers may bring an appeal if the following criteria are met:

A. Each Provider in the group is one which would be entitled to a hearing as provided for under Rule 3, except each Provider does not have to meet the \$10,000 threshold if all providers in the group combined have a total amount in controversy of at least \$50,000.

B. The matter at issue involves a single common question of fact or interpretation of law, regulation or CMS ruling. A group appeal is not appropriate if facts unique to each provider must be proved to resolve the issue appealed.

7.6 Mandatory Group Appeals: Common Issue Related Party (CIRP)

Pursuant to 42 C.F.R. § 405.1841 (a)(2), providers that are under common ownership or control must bring a group appeal for any matters involving an issue common to the related providers and for which the amount in controversy is, in the aggregate, at least \$50,000.

7.4 Optional and CIRP (Mandatory) Groups Not to be Combined

For case management purposes, optional and CIRP providers must be in separate group appeals. Separate groups involving the same issue may be consolidated for hearing at the Board's discretion.

7.5 Group representative

The group appeal must be filed by a single group representative. If the group representative is an organization, an individual must be identified. See Rule 16.5 for responsibilities of a representative generally.

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7.6 Transfer of Individual Issue to a Group Appeal

- A. An issue in an individual case may be transferred to a group appeal, provided the issue transferred is appropriate for the group. The transfer must be made by the group representative. See Rule 8.4.
- B. At the time of transfer, any documentation required by these Rules on Group Appeal must also be furnished, including schedules and supporting documents.
- C. The Board will not permit a transfer of the issue back to an individual case or a transfer to a different group except upon written motion demonstrating exceptional circumstances. A CIRP group provider may not transfer the CIRP group issue back to an individual appeal except for failure of the group to reach the \$50,000 amount in controversy threshold.

7.7 Group Size Limits

The Board may limit the number of providers in a group appeal as it deems necessary to assure efficient case management.

7.8 Completion of Groups

- A. In optional group appeals, the Board will not permit additions of providers after 12 months from the date of the group-hearing request except upon a showing of exceptional circumstances. The Board may close an optional group in less than 12 months if it determines that closure is necessary for efficient case management or if notified that the group is complete.
- B. The regulations require that a CIRP (mandatory) group appeal must contain all providers eligible to join the group. But see Rule 7.10 C for responsibilities and deadlines for CIRP groups.

7.9 Group Appeals: Format and Content

The appeal must conform to the format and content for an individual appeal set out in Rule, except:

- a. The group of providers (there must be at least 2 providers), in the aggregate, must have an amount in controversy of at least \$50,000.

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- b. Each group must be limited to a single issue common to all providers in the group.
- c. Identify the intermediary for each provider in the appeal.

7.10 Additional Documents Required in Group Appeals

The following additional documents must be filed with the lead intermediary. Although each of the following schedules address jurisdiction, the appeal must also conform to Rule 3 to demonstrate that the Board has jurisdiction over the providers named in the initial group appeal.

D. Schedule A: Schedule of Providers

1. General: Schedule A identifies providers in the group. Because Schedule A and the associated jurisdictional documentation become a part of the official record, the group representative must complete Schedule A and supporting documents so that it complies with the Board's format, is complete and is easily reviewable. These documents must be bound, tabbed and numbered. Due to space limitations, however, the Board does not accept submissions in three-ring loose-leaf binders. Schedules and jurisdictional documents that are not bound, tabbed and numbered in the proper format, as described below, will be returned. **DO NOT INCLUDE IN SCHEDULE A** those providers with known unresolved jurisdiction issues. See Schedule B.

2. When to File:

a. Optional Groups. Schedule A and the associated jurisdictional documents must be submitted to the lead intermediary within 60 days of the date of either the notice advising that the group is complete or 12 months after filing, whichever is earlier.

b. CIRP Groups. Schedule A and the associated jurisdictional documents must be submitted to the lead intermediary within 60 days of the date of group representative's notice advising that the group is complete or upon order of the Board.

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3. Format and content

- a. **All issues except wage data corrections:** The group representative must complete Schedule A (form attached) and submit a corresponding document for each lettered column except Column C on Schedule A for each provider listed.

Example:

Exhibit 1A will correspond to line 1, column A and will contain a copy of the final determination for the first provider listed. Exhibit 2A will correspond to line 2, column A, and so forth.

Exhibit 1B will correspond to line 1, column B and will contain a copy of the hearing request for the first provider. Exhibit 2B will correspond to line 2, column B, and so forth.

Exhibit 1D will correspond with line 1, column D and will contain a copy of the matter appealed (for example, the applicable audit adjustment page for the first provider. Exhibit 2D will correspond to line 2, column D, and so forth.

Exhibit 1E will correspond to line 1, column E and will contain a reimbursement calculation showing how reimbursement has been affected for the first provider. Exhibit 2E will correspond to line 2, column E, and so forth.

Exhibit 1G will correspond to line 1, column G and will contain a copy of the first provider's addition and transfer to group letter(s) if applicable. Exhibit 2G will correspond to line 2, column G, and so forth.

Exhibit 1H will correspond to line 1, column H and will contain a copy of the first provider's authorization of representation for the group representative. Exhibit 2H will correspond to line 2, column H, and so forth.

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b. Wage Data Correction Appeals. If the issue common to the group is a wage data correction issue, Schedule A, in lieu of the information requested in A.2 is to contain the following:

Tab A	Hearing Request Date
Tab B	Federal Register Notice
Tab C	Number of Days between hearing request and federal register notice
Tab D	Request for Wage Data Correction
Tab E	Intermediary Determination
Tab F	Any subsequent CMS Determination
Tab G	Designation of Representative for each provider.

4. Limited Filing with the Board. File only the schedule with the Board. DO NOT file supporting documents. (See rule 9 for lead intermediary's responsibility for submission to the Board.)

H. Schedule B: Schedule of Providers with jurisdictional impediments

1. General. The group representative must complete a separate Schedule B for Providers with jurisdictional issues. A separate Schedule B must be submitted for each type of jurisdictional problem (for example, late filing, not adjusted by revised NPR). The group representative must file with the intermediary the schedule(s) and a brief addressing each jurisdiction impediment, including the facts and the authorities upon which it relied. See Rule 22.4 – Response to Jurisdictional Challenge.

a. When to File:

i. Optional Groups. Schedule A and the associated jurisdictional documents must be submitted to the lead intermediary within 60 days of the date of either the notice advising that the group is complete or 12 months after filing, whichever is earlier.

ii. CIRP Groups. Schedule A and the associated jurisdictional documents must be submitted to the lead intermediary within 60 days of the date of group representative's notice advising that the group is complete or upon order of the Board.

b. Limited Filing with the Board. File only the schedule with the Board. DO NOT file supporting documents. (See rule 9 for lead intermediary's responsibility for submission to the Board.)

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B. Schedule C: CIRP Groups Only - Schedule of Providers that have not received NPRs

If the group is not closed within 12 months of the date the appeal is filed, Schedules A and B are not to be filed. However, the group representative is to file Schedule C to identify those providers that the regulations require must be included in the group but which have not had an NPR issued.

i. Format and Content

(Provider name, provider number, fiscal year in dispute, date cost report filed, date of acceptance or rejection by the intermediary, if any, and any pertinent info to explain why NPR is delayed or when it is expected.)

- ii. File schedule C and any supporting documents with both the lead intermediary and the Board within 13 months of the date the appeal is filed

7.11 Dismissal for Failure to Meet Deadlines

The Board may dismiss the group appeal if the group representative misses any of the deadlines established by these rules. If the group representative has met all of its deadlines but the lead Intermediary does not meet its deadlines, the case will, nevertheless, proceed to hearing. The Board will contact CMS regarding Intermediary contract compliance.

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Rule 8 – Board Acknowledgment of Group Appeal and communications with the Board

8.1 Selection of Lead Intermediary

Because there are responses due from the lead intermediary upon the initial filing of the group appeal, the group representative must designate the lead intermediary when the initial appeal is filed using the following criteria:

- C. The lead intermediary is the intermediary that services the majority of providers listed on the initial appeal request.
- D. If there is a tie, the lead intermediary will be designated as follows:
 - 1.) Based on the total amount of reimbursement at issue.
 - 2.) If the providers are commonly owned and have a home office, the lead intermediary will be that which services the home office.
- E. At the Board's discretion, it may change the designation of the lead Intermediary. If the Board finds a change is necessary, it will advise the parties in writing of its decision. Either party may file a motion with the Board to select a lead intermediary on other criteria or to change the lead intermediary.

8.2 Group Acknowledgment

The group representative and the lead intermediary selected by the Board will receive an acknowledgment from the Board indicating that the group appeal has been received and a case number assigned. It will also assign due dates for completion of the group, the Schedule of Providers and other documentation requirements.

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8.3 Confirmation of Transfer Requests

The Board does not acknowledge in writing the transfer of issues from an individual appeal to a group appeal unless it will result in the closing of the individual case. It is the provider's responsibility to advise the Board the final issue in an individual appeal is being transferred to a group.

8.4 Board Communicates Only with Group Representative

The Board will communicate about a group appeal only with the designated group representative. If the group representative is not the representative on the provider's individual appeal to which it is adding/transferring an issue, the group representative must obtain a limited representation letter signed by the provider, which allows the group representative to transfer the specific issue to the group. Each provider in the group must submit a letter of representation for the group representative (a copy of which will be included with the documentation associated with the Schedule of Providers) that includes the case number from which the issue is transferred and the group case number to which the issue is added. It is the responsibility of the provider that desires to be added to the group to communicate with the group representative to assure that the group representative has all required provider information to timely file with the Board.

RULE 9 - INTERMEDIARY RESPONSE TO GROUP APPEAL

9.5 Initial Review of Group Appeal Request

Within 30 days of receipt of the Board's acknowledgment of the group, the lead intermediary must review the initial group appeal request solely to determine whether the issue is suitable for a group appeal and notify the Board and the group representative, in writing, of its determination. If the intermediary determines that the issue is not appropriate for a group appeal, its response must state the facts and the authorities on which it relies.

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9.6 Review of the Schedules

The lead intermediary is responsible for reviewing the Schedule of Providers and the associated jurisdictional documentation (and Schedule of Providers with jurisdictional impediments, if applicable). This review is to be completed, with written notice to the Board of the Intermediary's findings on jurisdiction within 60 days of receipt for group appeals where there are 50 providers or less listed on the Schedule(s). If there are more than 50 providers listed on the Schedule(s), the Intermediary will have 120 days from receipt to complete its jurisdictional review and submit its response to the Board. See Rule 5.4 for the content and format of the Intermediary's response when a jurisdiction issue has been raised.

The lead intermediary must submit, with its jurisdictional response, the original Schedule of Providers (and Schedule of Providers with jurisdictional impediments, if applicable) with the associated jurisdictional documents to the Board to become part of the official record.

9.7 Briefing Jurisdictional Impediments for Providers on Schedule B

If the group representative has prepared a Schedule B, the lead intermediary must also send a written jurisdictional brief for each type of jurisdictional problem identified, within the same time frame.

9.8 Response to the merits of the group issue

The lead intermediary's response to the merits of the group issue is to conform to the requirements for a response to an individual appeal as set out in Rule 5. The Intermediary's response on the merits is due to be filed with the Board sixty days from the date of filing. (See 42 C.F.R. § 405.1841(a)). Extensions may be available as set out in Rule 5.

Rule 10 – Special Rules for Appeals of Children's Hospital Graduate Medical Education (CHGME)

10.8 General

CHGME is funded through an appropriation to the Department of Health & Human Services, the Health Resources & Services Administration, and the Bureau of Health Profession. (See <http://bhpr.hrsa.gov/childrenshospitalgme/>)

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Children's hospitals that operate graduate medical education programs are entitled to payments for direct and indirect expenses associated with operating those programs. The Secretary determines any changes in the number of residents reported by a hospital to determine the final amount payable. The final amount determined is considered a final determination appealable to the Provider Reimbursement Review Board (Board) under 42 U.S.C. § 1395oo. See 42 U.S.C. § 256e.

Payments to children's hospitals are based on the hospital's share of the total amount of direct and indirect Medicare education funding available in any Federal fiscal year (FFY). This funding is part of a fixed payment pool that is distributed prior to the close of each FFY. As a result, these appeals before the Board must be heard on an accelerated hearing schedule so that the providers' reimbursement is accurately determined prior to the end of the FFY. Set forth below are the procedures children's hospital providers need to follow to facilitate the accelerated hearing process.

10.9 Process for Filing a CHGME Appeal

F. Time for Filing

The regulations provide a 180-day appeal period for any final determination. However, children's hospital providers who delay filing run the risk of not being able to have a hearing and receive a written decision before the end of the applicable FFY. The Board recommends that any appeal of the changes in the number of residents be filed immediately upon receipt of the Intermediary's issuance of the "CHGME Program Payment Assessment of Full-Time Equivalent Resident Count."

G. Where to File

Send your appeal to the following address:

The Provider Reimbursement Review Board
2520 Lord Baltimore Drive, Suite L
Baltimore, MD 21244-2670

Please mark on the outside front cover of the envelope: **PRIORITY CHGME**

H. Telephone Notice to Board

Please call the Division of Jurisdiction and Case Management at (410) 786-2053 and indicate the date that you will be submitting the Provider's request by overnight mail.

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I. No Supporting Documentation to Board with Initial Filing

DO NOT send supporting documentation to the Board with the initial CHGME hearing request. See Rule 10.5 on when and what documentary evidence to file with the Board.

J. Other Parties to Receive Notice of Appeal and Supporting Documents

A copy of the hearing request and all documents that support the Provider's claim for reimbursement must be sent to:

Department of Health & Human Services
Office of General Counsel – Public Health Division
Room 4A-63 Parklawn Building
5600 Fishers Lane
Rockville, MD 20857
(301) 443-7844
(301) 443-2639 (fax)

The Office of General Counsel represents the agency in CHGME cases before the Board. Mark the outside of the envelope “PRIORITY CHGME APPEAL.”

10.10 Filing CHGME Appeal: Content and Format

The appeal must contain the following:

- a. Provider name and complete address;
- b. Provider number;
- c. Fiscal year end cost report from which FTE count was reviewed;
- d. Fiscal year ends to which the three-year rolling average applies;
- e. A copy of the “CHGME Program Payment Assessment of Full-Time Equivalent Resident Count”;
- f. The name, address, telephone number and facsimile number of the hospital contact;
- g. A complete statement of the issues (see examples of model issue statements in the Appendix at x);
- h. If the Provider is represented by an agent, a letter authorizing representation on the Provider's letterhead and signed by the person authorized to engage an agent.

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10.11 Board Acknowledgement of Filing CHGME Appeal

The Board will notify you of position paper due dates and the date of hearing promptly after receipt of your hearing request. Supporting documentation is to be submitted with the Provider's position paper. The position paper should refer to the exhibit number and page that supports the position. All personal identifying information, such as social security numbers, must be redacted from Board copies of hearing requests, position papers, and exhibits.

10.12 Position Papers

You may have as little as one week to file position papers, depending on the date of your filing and the Board's hearing schedule. Position papers must conform to Rule 13.

10.13 Public Health Service Response to CHGME Appeal

The response to the CHGME appeal is to conform to Rule 5, except time for response is set forth in the Board's Acknowledgement.

10.14 Extensions/Postponements

The Board disfavors requests for extensions of time for filing or postponements of CHGME hearings because of the need to conduct hearings and render decisions in a short period of time. Any request for an extension must be in writing and will be considered when extraordinary circumstances exist. An extension will generally not be granted on the grounds that the parties are conducting negotiations.

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PART II: PRE-HEARING PROCEDURES

Rule 11 – Motions and Requests

11.5 In Writing

All motions and requests to the Board are to be made in writing and are to set out the basis for the motion and any applicable legal argument.

11.6 Certificate of Conference

A. Except for motions that would be dispositive of the entire case (example: a motion to dismiss) the moving party must certify in the motion that he or she has conferred with the opposing party and that the opposing party does or does not agree or object to the relief requested. (See Rule 27 Certificate of Conference)

B. If the moving party has attempted to confer but has been unsuccessful, so state and briefly describe the attempts made.

Example 1: I certify that prior to filing the foregoing motion, I contacted x to confer and he advised that he did not oppose the extension requested.

Example 2: I certify that prior to filing the foregoing motion, I contacted x three times between June 1 and June 7 and left telephone messages about the motion. I did not receive a return phone call.

11.7 Time for Filing Response

Unless the Board imposes a different deadline, an opposing party may file a response within fifteen days from the date the motion is filed with the Board.

11.8 Certificate of Service

The Motion and any Response must also contain a certificate, signed by the representative, that a copy was sent to the opposing party, the date, and the method of delivery. (See Rule 26)

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Rule 12 – Discovery

12.13 Rules Designed to Minimize Discovery

The requirements for exchange of information in the regulations and the Board's rules on filing and responding to an appeal are intended to minimize the need for discovery.

12.14 Application of Federal Rules of Civil Procedure

Except as otherwise provided in these rules, the Board looks to the Federal Rules of Civil Procedure (FRCP) for guidance on discovery matters. However, the Board is not bound by the FRCP.

12.15 Types of Discovery

A. General: Discovery is available by deposition on oral examination, deposition on written questions, written interrogatories, requests for admission and production of documents.

B. The following types of discovery may be served only on a party to the appeal:

1. Written interrogatories,
2. Requests for admissions, and
3. Requests for production of documents.

C. Depositions may be taken of non-party witnesses and the deposition notice may also include a request for documents. If a non-party will not give a deposition voluntarily, the Board may issue a subpoena at the written request of a party seeking discovery. (See Rule 15.16)

12.16 Oral Depositions and Depositions on Written Questions

C. Deposition of a Party

1. **General:** Any party may take the deposition of another party by serving a Notice of Deposition on the party with a copy to all other parties.

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2. Content of Notice of Deposition:

- a. Identity of the person to be deposed. The notice must specify:
 - i. The name and address of the person to be deposed, or
 - ii. Sufficiently identify the person by title, or
 - iii. If neither is known, the notice may indicate that the deposition is of person or persons with knowledge of matters specified in the notice.
 - iv. The notice must set forth the subject to be addressed in the deposition.
 - b. If the person being deposed is to bring documents to the deposition, the documents must be described with particularity.
 - c. If the deposition is on written questions, the questions shall be attached to the notice.
 - d. The notice must set forth the subjects to be addressed in the deposition.
3. **Conference Required:** The party taking the deposition must confer with the party being deposed prior to sending notice as to the method of recording the testimony and the time and place of the deposition. Absent an agreement, the deposition must be taken at the deponent's place of business during regular business hours before an officer authorized to administer oaths. The deposition may not be taken less than 7 days after the notice is served.
4. **Costs:** The party taking the deposition bears the costs of deposition. Any other party may also request a transcript of the deposition at its own expense.
5. **Additional Requirements for Deposition on Written Questions:** Within 14 days after the Notice of Deposition on Written Questions (with written questions attached) is served, a party may serve cross-questions upon all parties. Within 7 days after being served with cross-questions, a party may serve redirect questions upon all other parties. Within 7 days after being served with redirect questions, a party may serve re-cross questions on all other parties.

D. Depositions of a Non-Party

If a non-party witness will appear voluntarily, the deposition may be taken as provided for depositions of parties. If the witness will not appear voluntarily, the party may request that the Board issue a subpoena. (See Rule 15.16)

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12.17 Interrogatories

G. General: Any party may serve on another party written interrogatories. Interrogatories may not be served on a non-party. The interrogatories shall not exceed 25 questions, including subparts.

H. Answers and Objections: Each interrogatory shall be restated, and then each shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable. The answers are to be signed by the person making them and the objections are to be signed by the representative making them.

I. Time for Response: Absent an agreement for a different time, the party answering the interrogatories shall serve a copy of the answers and objections, if any, on the other parties within 30 days after receipt.

J. Waiver of Objections: All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the Board for good cause.

K. Compelling Discovery: The party submitting the interrogatories may move for an order to compel with respect to any objection or other failure to answer an interrogatory.

L. Option to Produce Business Records: Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

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12.18 Requests for Admission

G. General: A party may serve upon any other party a written request for admission, for purposes of the pending action only, of the truth of any matters relevant to the dispute, including statements or opinions of fact, the application of law to fact, or the genuineness of any documents described in the request. Copies of documents on which a request is based must be served with the request unless they have been otherwise furnished. Each matter of which an admission is requested shall be separately set forth in numbered requests.

H. Reasonableness of Requests: Requests for admission must avoid inflammatory or unreasonable requests. Abuse of discovery may result in the Board's imposing sanctions or a protective order. See Appendix x for examples of improper requests for admissions.

I. Deemed Admissions: The matter is deemed admitted unless the party to whom the request is directed serves a written answer signed by the party or objection signed by the representative within 30 days after service of the request.

J. Objections and Answers: If any objection is made, the reasons shall be stated. The answer shall specifically admit or deny the matter or shall set forth in detail why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission and, when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of its as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny.

K. Compelling a Response: A party who has requested the admissions may move to determine the sufficiency of the answers or objections. If the Board determines that an objection is not justified, it may order an answer to be served. If the Board determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served.

L. Effect of Admissions: Any matter admitted under this rule is conclusively established unless the Board on motion permits withdrawal or amendment of the admission.

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12.19 Production of Documents

G. General: Any party may serve on any other party a request to produce and permit inspection and copying of any designated documents or data compilations from which information can be obtained.

H. Content of Request: The request must set forth, either by individual item or by category, the items to be inspected and describe each with reasonable particularity.

I. Conference Required: Prior to sending the request, the requesting party must confer with the party from whom discovery is sought to discuss time, place and manner of making inspection. Absent an agreement, the request must specify a reasonable time for production during regular business hours and a date not less than 30 days after service of the request. Absent an agreement to the contrary, it must specify the place for inspection as the producing party's place of business. The inspection and copying may be made by the party or someone acting on the party's behalf.

J. Response: The party on whom the request is served must serve written response within 20 days after the service of the request. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be stated. If objection is made to a part of an item or category, the part shall be specified and inspection permitted of the remaining parts.

K. Compelling Production: The party submitting the request may file a motion for an order to compel discovery with respect to any objection or other failure to respond to the request or failure to permit inspection as requested.

L. Organization of Documents Produced: A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

12.20 Subpoenas to Aid Discovery of Non-Parties

If a non-party will not voluntarily give a deposition or produce records requested, a party may request that the Board issue a subpoena. The requesting party must show that the information sought is relevant to the case and not available through other means. The Board may also issue a subpoena on its own motion.

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Subpoena requests to aid discovery are to conform to the Board's rules relating to motions. A request for an individual to appear for a deposition must provide the name and address of the person or must sufficiently describe the information sought to permit the person to be identified (for example, a person with personal knowledge of the Provider's billing procedures). If documents are subpoenaed, the documents must be described sufficiently to permit them to be found. The request must also state what the party requesting the subpoena expects to establish through the persons or documents being subpoenaed.

12.21 Timing of Discovery

Discovery must be initiated so that responses are due to be complete at least 30 days before the hearing.

For cases in which discovery may be extensive, the parties are encouraged to develop an Agreed Joint Scheduling Order which may alter the times specified in these rules. (See Rule 28) Without an agreement, responses will be due as provided in these rules or, if not specified in the Board's rules, by the Federal Rules of Civil Procedure or by order of the Board.

12.22 No Filing with Board Except in Disputes or When Submitted as Evidence

Requests for discovery and responses are not to be filed with the Board except as follows:

C. Discovery Disputes: If there is a dispute over discovery, you may request the Board's assistance. File with your motion those portions of the discovery that are relevant to the dispute. If only an excerpt is submitted, include the signature page and the cover page to indicate the source of the excerpt.

D. Use of Discovery at the Hearing or as an Exhibit to a Position Paper: Evidence elicited through discovery may be designated as an exhibit or read into the record of the hearing. If the discovery is to be used at the hearing as evidence or is to be attached to a position paper as an exhibit, submit those portions relevant to the issue plus the signature page and a cover page to indicate the source of the excerpt. The opposing party may submit other portions of the same document in rebuttal. Discovery may be used at the hearing for impeachment without prior notice or designation.

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12.23 Sanctions

Failure to cooperate in discovery may result in the Board's refusal to consider evidence of the party it finds to be uncooperative or the Board may draw inferences that the discovery not furnished would have been prejudicial to the uncooperative party.

12.24 Protective Orders

Upon a motion by a party or a person from whom discovery is sought, the Board may make an order required to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including but not limited to, one or more of the following:

- A. That discovery not be had,
- B. That the discovery may be had only on specified terms and conditions,
- C. That the scope of discovery be limited,
- D. That discovery be conducted to preserve confidentiality.

Rule 13 – Position Papers

Position papers are to address the factual basis and legal authority for each issue appealed. Issues not fully briefed by the Provider may be dismissed; issues not fully briefed by the Intermediary may be referred to CMS for failure of contract compliance.

13.7 Due Date

Position paper due dates will be established by the Board. The Provider will be notified of the due date in an "Acknowledgement and Notice of Critical Dates."

13.8 Dismissal for Failure to Timely File

The Provider's failure to timely file its position paper will result in dismissal of its appeal. The Intermediary's failure to timely file its position paper will result in referral to CMS for failure of contract compliance.

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13.9 Extensions

Extensions for filing should be filed at least two weeks before the due date and will be granted only upon written motion. A certificate of conference is required. (See Rule 27) If the Board has not notified the moving party before the due date that an extension is granted, the request is denied and the appeal will be dismissed if the position paper is not timely filed. Administrative oversight or negotiations between the parties are not generally considered good cause for an extension, nor is a last minute change of representation.

13.10 Content and Format

A. Position Papers are to include the following:

1. A cover page
2. A table of contents identifying each issue addressed in the position paper and the pages where the discussion of that issue can be found.
3. A discussion of each issue including, at a minimum:
 - a. Identification of each issue and its reimbursement impact
 - b. Procedural history of the dispute
 - c. A statement of facts that:
 - i. Indicates which facts are undisputed
 - ii. Indicates, for each material disputed fact, the evidence that party asserts supports those facts. The discussion must reference the exhibit number and page to which the party refers.
 - d. Argument and Authorities - An explanation of the party's position of how the authorities apply to the facts. The discussion must reference the specific document in the appendix (see below) by tab identification and page number.
4. Index to Exhibits
5. Exhibits
6. Appendix of Legal Authorities
7. Signature of the representative
8. Certificate of Service

B. The following items are included in the official record and are NOT to be included as a position paper exhibit:

1. Hearing request
 - a. Board's acknowledgement
 - b. Opposing party's position paper
 - c. General correspondence with the Board.

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- C. Jurisdictional challenges or responses to a jurisdictional challenge are to be in a document separate from the position paper. (See Rule 22)

13.11 Cover Page

The cover page is to indicate which party submits it, either “Provider’s Position Paper” or “Intermediary’s Position Paper.” It is also to include names of the parties, case number, fiscal years in issue and the name, address, telephone, and fax number of the representative submitting the paper.

To facilitate Board review and presentation of evidence at the hearing, the Board requests that the cover and back pages of the Provider’s position paper and other bound packets be yellow and the Intermediary cover and back pages be blue or red.

13.12 Size, Spacing, Binding, Tabbing, and Numbering

H. Size: Use 8 ½ x 11 paper.

I. Numbering: Number every page of the position paper and number the pages of all exhibits that exceed 2 pages.

J. Exhibit Identification: Separate exhibits by tabs with identification as either Provider or Intermediary exhibits (P-1, P-2 or I-1, I-2, etc.). Do not submit duplicate exhibit numbers (example: if a supplemental position paper is filed, use exhibit numbers that are sequential to the original position paper).

K. Legible Copies: Exhibits must be readable.

L. Appendix: If an Appendix of Legal Authorities is included, separate documents by alphabetical tabs. Include an index. The appendix may be bound separately. Excerpts may be furnished in lieu of the entire document. Portions of authorities relied upon may be highlighted.

M. Binding: Binding must be suitable for the thickness of the position paper. The document should remain open easily with the text unobscured by binding. Because of space limitations, please do not send position papers in notebooks. The Board prefers comb type binding.

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N. Number of Copies and Time for Filing :

1. The original is to be filed with the Board and one copy is to be served on the Intermediary in compliance with the position paper due dates in the Board's Acknowledgement. See Rule 2.7.
2. The parties are to furnish 5 additional copies of the position paper for use by the Advisor and each Board member in the hearing. Contact your Board Advisor for when to send the copies. Do not send the Board copies earlier than 7 days before the hearing. Board members' copies should be designed for easy reference during the hearing. The Board's extra copies may be in loose- leaf binders but must otherwise meet all of the same requirements as for the original filing.

Rule 14 – Pre-hearing Conferences and Case Management

14.4 General

Pre hearing conferences may be scheduled by the Board to, among other reasons, narrow issues and discuss logistics to expedite the hearing. Telephone conferences are generally held by one Board member.

14.5 Pre-hearing Conferences

It is the Provider's responsibility to contact the Intermediary and the Board Advisor to set up a pre-hearing conference. The date for the conference is to be at least 20 business days before the hearing. The parties must be prepared to discuss the following **AND** are expected to have discussed the following with each other prior to the telephone conference with the Board:

- A. Issues remaining.
- B. Amount in controversy for each issue.
- C. Status of settlement discussions and potential for further settlement.
- D. Stipulations.
- E. Evidentiary issues.
- F. Witnesses.
- G. Documentary evidence.
- H. Feasibility of jointly filing an appendix of authorities.
- I. Whether witnesses will appear in person, by deposition, telephone or video.
- J. Identification of the material facts in issue, i.e. the parties should be able to articulate what fact findings the Board will be required to make.

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- K. Estimated length of hearing.
- L. Audio and visual needs.
- M. Special needs for the hearing such as accommodations for handicapped witnesses.

14.6 Communications with the Board

The Board or its staff may contact parties at any time to discuss the case, to schedule a telephone conference with the Board or to request information about the case. If the Provider fails to respond to the contacts within a reasonable time, the Board will dismiss the case.

Rule 15 – Hearing

15.25 Notice of Board Hearing

The Board will issue a Notice of Hearing at least 30 days before the hearing date unless the hearing date is rescheduled at the request of a party or unless the 30-day notice is waived by the parties. The Notice will contain the following:

15.26 Dismissal for Failure to Appear

No further notices will be sent. A Provider's case will be dismissed for failure to appear at the hearing.

15.27 Postponement of Hearing

- A. One postponement may be granted for good cause. Multiple postponements will not be permitted except in extraordinary circumstances. Postponements will generally not be granted when the Board issues a notice labeled "Last and Final Notice of Hearing."
- B. Adding an issue or requesting or submitting new information by either party within thirty days of the hearing date will generally not be considered good cause for postponing a hearing.
- C. Requests for postponement must be in writing and received by the Board sufficiently in advance of the hearing to be acted on by the Board. The request must contain a certificate of conference (see Rule 27) indicating whether the postponement is opposed.

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15.28 Hearing Dates Set Pursuant to Joint Scheduling Order (See Rule 28)

- A.** The Board will generally grant a hearing date requested by the parties as part of an Agreed Joint Scheduling Order provided:
1. It is filed with the Board prior to the Board's setting a hearing date, and
 2. Provided the hearing date requested does not exceed 24 months from the date of filing the appeal.
- B.** Board-established hearing dates will not generally be postponed on the grounds that the parties have entered into a scheduling order if:
1. The scheduling order is filed with the Board less than 30 days prior to the hearing date, or
 2. If the parties have already been granted a postponement.
- C. Exceptions:** The Board may grant a postponement based on a late filed Agreed Joint Scheduling Order upon written motion of the parties that demonstrates that the parties have worked diligently and without fault to exchange, audit or discover information or take other action needed to prepare for the hearing. Details of the parties' actions and efforts must be provided.

15.29 Witness List

A list of witnesses must be filed with the Board and served on the opposing party at least 30 days before the date of hearing. The list must identify each witness, the witness' relationship to the party, and the nature of the testimony.

15.30 Expert Witnesses

If a party intends to offer a witness as an expert, a statement narrowly defining the area of expertise and a resume showing the witness's qualification as an expert is to be included. The Board generally does not permit designation of a witness as an expert on Medicare cost reimbursement issues because it is the Board's area of expertise. However, the Board allows lay opinion evidence from witnesses on Medicare cost reimbursement issues.

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The party proposing the expert must demonstrate, through testimony, that the expert is qualified in the area of expertise designated. The proposed expert will be subject to questioning by the opposing party and the Board as to the witness's expertise before the Board rules on whether the witness will be recognized as an expert.

15.31 Location

Except as the Board may otherwise designate, Board hearings are held at the Board's office at 2520 Lord Baltimore Drive, Suite L, Baltimore, MD 21244.

15.32 In-Person Hearing

The parties' representatives and witnesses are expected to appear in person unless prior arrangements for an alternative form of hearing are made with the Board.

Board Commentary: Video, telephone or record hearings are not provided as a matter of right under the statute and regulations. The Board has permitted these forms of hearing to accommodate the parties' needs to make the hearing less expensive and less burdensome. However, these alternatives have been abused. For example, cases designated for record hearing have not been well organized or well developed, making it difficult for the Board to associate the evidence with the arguments. In cases where the Board has permitted witnesses to appear by telephone or video, the witnesses have not had all the evidence accessible or the exhibits available are not marked with the same exhibit and page numbers as the exhibits furnished to the Board. This delays proceedings and makes cross examination and examination by the Board ineffective. These rules are designed to make clear that alternative forms of hearing require the same, if not more, organization and development as in-person hearings.

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15.33 Telephone Hearing

In an appropriate case, the parties may request to present their case by telephone conference, or a party may present a witness by telephone conference as part of an in-person hearing. An appropriate telephone hearing, generally, is one that involves few fact issues, requires minimal reference to exhibits, and does not exceed 150 minutes. Witnesses in a telephone hearing will be asked to identify any other individuals and documents with them during the testimony. Upon objection, the other individuals in attendance with the witness may be required to leave. It is the responsibility of the party calling a telephone witness to assure that the witness has all exhibits submitted by both parties available and that those documents are organized the same as the Board's exhibits; that is, by exhibit number and page number.

15.34 Video Hearing

In an appropriate case, the parties may request to present their case by videoconference or that method may be used as part of a case presented in an in-person hearing. An appropriate case is, for example, one in which there is limited need to refer to exhibits or one in which a witness is distant and appearing in person would cause undue hardship or expense. Witnesses in a video hearing will be asked to identify any other individuals and documents with them during the testimony. Upon objection, the other individuals in attendance with the witness may be required to leave. It is the responsibility of the party calling a video witness to assure that the witness has all exhibits submitted by both parties available and that those documents are organized the same as the Board's exhibits; that is, by exhibit number and page number.

15.35 Record Hearing

- A.** In an appropriate case, the parties may request to present their case only on the written position papers and exhibits. Record hearings are generally not appropriate for cases in which there are multiple issues, in which material facts are disputed, or in which the credibility of witnesses is in issue. A case that involves a legal issue only is appropriate for a record hearing.
- B.** Permission for a record hearing is made based on the record before the Board at the time of the request. By agreeing to a hearing on the record, the Provider waives its right under 42 C.F.R. § 405.1841 to add an issue to the case. The Board may allow parties 30 days to supplement the record to provide affidavits to prove documentary evidence. However, no other new evidence or arguments will be permitted.

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- C.** The record must be complete and well organized. Position papers must clearly reference specific evidence on which the parties rely, including the exhibit number and page. The record must contain either a stipulation of both parties or an affidavit of a person or persons with personal knowledge to prove that the exhibits are genuine copies of the original and are what they purport to be. (See Rules 15.18 & 15.22) If the Board finds that a record is not complete, not well organized, that the evidence as to disputed facts is un-sworn, or is otherwise not suitable for a record hearing, the Board will direct the parties to re-file or to participate in a hearing form more suitable for the particular case.

15.36 Quorum

A quorum of the Board is required for a decision but not for a hearing. However, the parties may request, in writing, a hearing with a quorum of Board members. In most circumstances, at least a quorum of Board members is present at all hearings.

15.37 Disqualification of Board Members

- A.** A Board member may recuse himself or herself if there is any connection with the parties or other reasons that might give the appearance of an inability to render a fair and impartial decision. Some recusals are mandated by government ethics rules (for example, significant stock ownership in a company that is a party to the case or that is closely related to a party). The parties will be notified of such recusals and the record will reflect the recusal.
- B.** A party may also request recusal. The objection must be in writing and filed with the Board with a copy to the opposing party. If the Board member does not agree to the recusal, the party may petition the Board, in writing, for a ruling on the member's decision prior to the hearing.
- C.** A Board member that is recused does not engage in any decision making process, including any meetings or informal discussions on the merits of the matters under consideration.

15.38 Opening Statement

The parties may open with a brief statement summarizing the facts, including matters stipulated, matters in dispute, and the nature of the evidence to follow.

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15.39 Evidence – General

- A.** Board hearings are adversarial. Each party may call witnesses, offer evidence, and cross-examine the opposing party's witnesses. Generally, the Provider presents its case first. However, the parties may agree to a different order of presenting evidence or the Board may request a different order. The Board may also question witnesses or the representatives at any time during the hearing. After the parties have examined the witness, the Board will be offered an opportunity to ask questions. The parties will then be given an opportunity to ask further questions based on the Board's questions.
- B.** Board hearings are not restricted to formal rules of judicial procedure or evidence. Procedures are intended to allow the full presentation of the facts and arguments relevant to disputes. Objections to the admissibility of evidence should, therefore, be minimal. The weight to be given evidence will be determined by the Board.
- C.** Parties are expected to be thoroughly familiar with their documentary evidence and the specific facts and legal positions that must be addressed to present their cases expeditiously. The Board may bar evidence that is irrelevant or repetitious.
- D.** If the Board has approved testimony via telephone or video hearing, it is the responsibility of the party calling the witness to assure that the witness has all exhibits submitted by both parties available and that those documents are organized the same as the Board's exhibits; that is, by exhibit number and page number.

15.40 Subpoenas

A party may request that the Board issue a subpoena for the attendance and testimony of a witness or for the production of records or other materials relevant to the case, provided the requesting party can show that the information sought is not available through other means. The Board may also issue a subpoena on its own motion.

- A.** Subpoena requests are to be filed at least 10 days before the hearing and are to conform to the Board's rules relating to motions.
- B.** A request for an individual to appear as a witness must provide the name and address of the person or must sufficiently describe the information sought to permit the person to be identified (for example, a person with personal knowledge of the provider's billing procedures).

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- C.** If documents are subpoenaed, the documents must be described sufficiently to permit them to be found. The request must also state what the party requesting the subpoena expects to establish through the persons or documents being subpoenaed.

15.41 Exhibits not Previously Submitted with the Initial Filing or Position Papers

Board Commentary: The statute and regulations establishing the Board contemplate that the Board will review Intermediary determinations based on evidence submitted to the Intermediary. Documentation submitted late without adequate time for the parties' review puts the Board in the position of first reviewer, contrary to the appellate process established by the statute and regulations. However, the regulations also permit the parties to exchange documentation during the pendency of the appeal for the purpose of reaching stipulations to resolve or narrow the issues before the Board. In order for the Board to manage its caseload and to avoid prejudice to the parties, the Board must impose limitations on when new evidence can be presented.

- A.** The parties are expected to identify and exchange documentary evidence upon the Provider's initial filing and the Intermediary's response. For those issues that cannot be resolved in the stipulated process set out in these Rule 3 and 5 and regulations at 42 C.F.R. § 405.1841(a), the parties may submit documentary evidence for the hearing. Documents that the parties desire to submit into evidence are to be attached as exhibits to the position papers. (See Rule 13)
- B.** Documents that could not have been submitted under rules 3, 5, and 13 (except publicly available information such as regulations or prior Board decisions) must be furnished to the opposing party as soon as practicable but not less than 14 days prior to the hearing in order to give both parties ample time to submit and review documentation prior to the hearing.
- C.** If the opposing party has no objection, exhibits may be added up to the time of the hearing.
- D.** If the opposing party objects, the Board will determine the propriety of permitting late filed exhibits, taking into account the reasons for the late filing, the prejudice to the opposing party, and the significance of the evidence. The parties are cautioned, however, that any new data submitted or requested that requires analysis and follow-up by the opposing party must be submitted or requested within a reasonable amount of time to allow a response and any follow-up analysis to have been completed at least 14 days before the hearing.

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Example: If the Provider expects to present new data not previously reviewed by the Intermediary to support the Provider's claim, that data must be submitted to the Intermediary well in advance of the hearing to permit the Intermediary to analyze the data and request any follow-up information that may be needed. If new information is requested by the Intermediary from the Provider, (Such as a sample) the Intermediary must make the request sufficiently ahead of the hearing date to permit collection of data and analysis.

- E.** To avoid prejudice to a party and/or to avoid unreasonable delay of Board proceedings, the Board may exclude from consideration evidence that has not been timely submitted or requested as provided above.
- F.** An untimely submission or request for new information will generally not be considered good cause for postponing a hearing or the deadline for position papers.
- G.** These rules that, in some limited circumstances, permit late submission of evidence do not excuse the parties' responsibilities to exchange information as required by Rules 3, 5 and 13.

15.42 Testimony Under Oath

Witnesses will be sworn or affirmed unless excused by the Board for cause.

15.43 Visual Aids

The Board encourages the use of visual aids that facilitate presentation of evidence (charts, diagrams, large print copies, power point presentations, etc.). Visual aids should not contain material not previously submitted to the opposing party. The Board also requests that an 8 ½ x 11 copy of the visual aid be submitted for the opposing party and six copies for the Board and the Advisor. If the visual aid is not a copy of a marked exhibit, for clarity in the record, a copy of the visual aid should be added as an exhibit. A board, markers, and flip charts are available for use during the hearing. An overhead projector is also available.

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15.44 Summaries

Summaries are encouraged whenever the evidence is voluminous. The summary must be based on evidence in the record unless the opposing party agrees to use of a summary only. A summary exhibit must be furnished to the opposing party's representative at least three working days before the hearing unless the opposing party agrees to a shorter time.

15.45 Deposition Testimony

Deposition testimony may be used at the hearings as if the deponent were present and testifying. The opposing party must be notified of the intent to use deposition testimony at least seven working days before the hearing. Prior notice is not necessary if the testifying witness is present and the deposition testimony is used for rebuttal or impeachment. The opposing party may require the party offering deposition testimony to include additional excerpts from the deposition.

15.46 Affidavits

Because affidavits do not permit an opponent an opportunity to cross-examine, affidavits as to material facts in dispute will generally not be considered without an agreement by the opposing party. Affidavits are to be made on personal knowledge of the Affidavit and be signed before an officer authorized to administer oaths (e.g. a notary).

15.47 Stipulations

A stipulation is an agreement as to what the evidence is. Stipulations become part of the record and require no further evidence. Stipulations may be read into the record during the hearing or referenced by the parties in testimony or argument. Oral stipulations may also be entered into the record during the hearing.

15.48 No Patient Identifying Information

Evidence that contains any patient identifying information must be redacted from the record. Contact the Board Advisor assigned to the case for assistance on methods of submitting evidence while maintaining confidentiality of patient information. Material containing patient information or any other confidential information will be returned to the sender.

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PART III – MISCELLANEOUS PROVISIONS

Rule 16 – Designating a Provider Representative

- 16.1** If the person signing the appeal is not the Provider's owner or officer (see Rule 3.11), the appeal must also include a Designation of Representative. The letter designating the representative must be on the Provider's letterhead and be signed by an owner or officer of the Provider. It must also contain contact information for the representative. (See Rules 16.5-16.7 re: changing and withdrawal of representatives and responsibilities of the representative.)
- 16.2** A representative may be designated at any time during the pendency of the appeal. However, the recent appointment of a representative generally will not be considered cause for delay of any deadlines or proceedings.
- 16.3** An individual must be designated. Other members of the representative's organization may participate and documents filed with the Board may so indicate. However, any document filed with the Board is to be signed by the designated representative. (See Rules 16.4 & 16.5)

16.4 Contacts with the Board: One Representative per Appeal

The Board staff will communicate with only the designated representative of record. (Example: The Board will not recognize or communicate with one representative for issues 1-4 and a different representative for issues 5 and 6.) In teleconferences with the Board or in hearings, the representatives may have assistance of others, such as Provider or Intermediary employees, attorneys or consultants. However, the Board will send notices and accept information or changes (Example: Notice of Withdrawal of Issues) from only the designated representative.

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16.5 Responsibilities of Representative

The representative is the individual with whom the Board maintains contact. The representative is responsible for keeping the Board informed of his or her contact information, for meeting the Board's deadlines, and for responding to correspondence or requests from the Board and Intermediary. Actions by the representative are considered to be those of the Provider. Failure of a representative to carry out his or her responsibilities is, generally, not considered by the Board to be good cause for delay or for other relief.

16.6 Changing Representatives

A Provider may change representatives by following the same written notice required for initially designating a representative. **A designated representative may not name another representative on behalf of a provider.**

16.7 Withdrawal of a Representative

If the Provider does not designate a substitute representative, a representative may withdraw from representation only upon written notice to the Board **with a copy to the Provider** that includes the full name, address and telephone number of the Provider. Substitutions or withdrawals in compliance with the Board's procedures do not necessarily relieve the Provider and representative's obligations to each other. However, the Board will not hear disputes over the proper representative. Withdrawal or substitution of a representative is, generally, not considered good cause for delay or other relief.

Rule 17 – Withdrawal of Appeal

It is the Provider's responsibility to withdraw cases in which a written settlement has been executed or in which the Provider no longer intends to pursue the issues. See Rule 19 on reinstatement if a settlement is not effectuated as agreed.

Rule 18 – Dismissal or Closure

- A. The Board will issue a written closure upon notice from the parties that the case has been settled or withdrawn.

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- B.** The Board may also dismiss on its own motion:
1. If it has a reasonable basis to believe that the issues have been fully settled or abandoned (For example, see Rule 14.3), or
 2. Upon failure of the Provider to comply with Board procedures, or
 3. If the post office is unable to deliver mail to the provider or representative at the last known address.

Rule 19 – Reinstatement

- A.** A request for reinstatement must be in writing, must be made within three years after the date of the notice of dismissal or closure and must set out the reasons for reinstatement.
- B.** Upon a written motion showing that closure of the case was due to a settlement that was not implemented by the Intermediary as agreed and that the Provider was not at fault, the case may be reinstated. The Board will no longer grant automatic reinstatement based on a written settlement agreement. Cases will not be reinstated on a motion filed more than three years after the date of the Board's notice of dismissal or closure.
- C.** Upon written motion demonstrating good cause, a case dismissed for failure to comply with Board procedures may be reinstated. Generally, administrative oversight, settlement negotiations or a change in representative will not be considered good cause. If the dismissal was for failure to file a paper with the Board that was required, the motion for reinstatement must include the required filing before the Board will consider the motion. However, late filing with the motion does not assure that the Board will reinstate.

Rule 20 - Telephone Contact with the Board Staff

Inquiries about a case or questions about the Board or its procedures should be directed to the Board Advisor or, if an Advisor has not been designated, to the staff at 410-786-2671. **Do not call Board members directly.**

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Rule 21 -- Abeyance

- 21.1** A request for abeyance must be in writing and conform to the rules relating to motions. It must state in detail the reasons for the abeyance. Generally, an abeyance will not exceed 180 days and the parties may be required to report regularly to the Board on the status of the matter giving rise to the abeyance.
- 21.2** Requests for abeyance because a fraud investigation is underway must be in writing and demonstrate why the Board's proceedings would prejudice the investigation. Requests by the Office of the Inspector General or the Department of Justice must conform to the rules relating to motions, including service on the parties. The Provider will have an opportunity to respond. Generally, an abeyance for a fraud investigation will be granted if the Provider agrees to the request.

Rule 22 – Challenges to Jurisdiction

22.3 General

Jurisdiction is never waived and may be raised at any time. However, the Board expects the Intermediary to have thoroughly reviewed the Provider's claimed basis for jurisdiction and raise any jurisdiction challenges in the Intermediary's response to its review of the initial filing or prior to the response due date. (See Rule 5.4)

22.4 Procedure for Challenging Jurisdiction

If the Intermediary challenges the Provider's right to a hearing by the Board, it must raise the issue in writing, stating concisely the reasons for the challenge and discussing authorities applicable to the challenge. Any documents relevant to the challenge are to be attached (for example, a request for reopening, the notice of reopening and the relevant pages of the revised NPR).

- 22.3** Challenges to jurisdiction are not generally considered good cause for postponement of deadlines.

22.5 Response to Jurisdictional Challenge

The Provider may respond to the jurisdictional challenge in writing within 30 days of the receipt of the Fiscal Intermediary's challenge.

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Rule 23 – Mediation

23.4 General

The Board offers both the Provider and the Intermediary the opportunity to resolve their outstanding issues informally through the use of a form of alternate dispute resolution, i.e. mediation. This process is non-binding and was first introduced in 1998. **It has a 90-95% success ratio.** The mediation sessions are conducted by trained mediators from the Office of Hearings. After acceptance into the mediation program, both parties must file with the mediators a short (one to two page) summary of their position on the issues to be mediated approximately 30 days before the scheduled mediation. The parties must also exchange all relevant documentation. A lead spokesperson must be designated by both parties at the mediation session. Additionally, the parties are required to have in attendance at the session someone with the authority to settle the matters at issue.

At the mediation session, the mediators will direct the Provider, as the moving party, to set forth its position first, after which the Intermediary states its position. Following these presentations, the mediators meet privately to review the issues and, then may meet privately with each party to discuss areas of agreement, etc. If the parties voluntarily reach a resolution on some or all issues, they meet together to draft a settlement agreement.

23.5 Filing Requirement

Within 60 days after an appeal is filed, the parties will be required to file with the Board a statement on whether or not the case under appeal is appropriate for mediation. The Parties should include with this filing a brief statement supporting its reasoning. This filing should be a separate document titled “Mediation Filing” and include a Certificate of Conference (see Rule 27) and a Certificate of Service (see Rule 26).

Once a filing is received that indicates a case may be appropriate for mediation, both parties will be contacted to determine if they both agree to mediate the case. **The parties must continue to adhere to all due dates until written confirmation is received that the appeal has been accepted into the mediation program.** If an Intermediary refuses a Provider’s request to mediate a case, the Provider may request that the case be fast tracked for a hearing.

If the parties agree to mediate the case, the Board staff will notify the parties in writing that the case has been accepted into the mediation program and will suspend all pending position paper due dates. Generally, the mediation session will take place at the offices of the Intermediary.

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23.6 Scheduling Mediation Sessions

Once the case(s) have been approved by the parties for mediation, every effort should be made to mediate the case(s) within 180 days of the acceptance into the mediation program. The Intermediary will be expected to contact the Provider(s) and the Board's staff to coordinate the scheduling of the mediation sessions. If the parties do not make a genuine attempt to schedule mediation within this time frame, the case(s) will be removed from the mediation program, and position paper due dates will be reestablished.

Note: A Provider can also request mediation at the time the appeal is filed or at any time after the appeal has been established or the “**Mediation Filing**” has been submitted. If a Provider is requesting mediation in its initial request for hearing, it should make sure that this is highlighted on the front page of its request. An Intermediary may also request mediation once it receives information on the Provider's appeal or subsequent to its “**Mediation Filing**”.

Rule 24 – Postponements

Requests for postponements of filing deadlines or hearings must be in writing and set out good cause for delay. They should include a Certificate of Conference (see Rule 27) and a Certificate of Service (see Rule 26). Requests that the Board does not grant by the due date are denied.

Rule 25 – Service on Opposing Party of All Papers Filed

Any document or correspondence filed with the Board must also be sent to the opposing party at the same time it is sent to the Board. Every document should indicate service on the opposing party by a certificate of service or, if it is a letter or memo, a notation on the document (carbon copy) that it was sent.

Rule 26 – Certificate of Service

Any document that is filed with the Board or Intermediary is to contain a Certificate of Service showing that it was also sent to the opposing party/Board. A Certificate of Service shall be in substantially the following form:

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A. Certificate of Service

*I certify that a copy of the foregoing document was served on _____ at _____
by _____ (example: certified mail, return receipt requested, delivery by
Federal Express, etc.) on this _____ day of _____, 200__.*

Signature

Rule 27 – Certificate of Conference

A Certificate of Conference is required by these rules for any motion or request that is not dispositive of the entire claim. (Example: A motion for postponement requires a Certificate of Conference; a motion to dismiss the entire case does not.) Parties are expected to confer in good faith. The Certificate of Conference is to be in substantially the following form:

Example 1

B. Certificate of Conference

*I certify that I conferred with _____ concerning the foregoing
_____ [motion for extension, request for discovery, etc.] and _____ he/she
_____ [does/does not] oppose the _____ [motion/request, etc]*

Signature

Example 2

C. Certificate of Conference

*I certify that I conferred with _____ concerning the foregoing
_____ [motion for extension, request for discovery, etc.] by
_____ [give details of attempts; for example, by leaving five telephone
messages between Jan 10 and Jan 15] but was unable to discuss the matter.
[Add any other relevant information; for example, I was advised by her secretary that she
was on vacation and not expected to return until _____].*

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Signature

Rule 28 – Agreed Joint Scheduling Orders

If the parties expect the case to require extensive discovery or voluntary exchange of data and analysis of new data, they may create a joint schedule for hearing and pre-hearing matters suitable for the circumstances. Generally, the Joint Scheduling Order will supersede these rules establishing other deadlines provided certain criteria are met. See Rule 12.9 relating to timing of discovery and Rule 15.4 relating to hearing dates.

Rule 29 -- Requesting Accelerated or Expedited Hearing or Special Setting

- A. You may request that your case be set at the earliest possible date or that it be set on a specific date or within a range of dates. State the circumstances on which your request is based. Your request should demonstrate that the case has no impediments to a hearing such as a jurisdictional challenge or pending or expected discovery or documentation requests. The request must include a certificate of conference (see Rule 27) with the Intermediary and must indicate whether any part of the request is opposed. If the only proposed date of the hearing is in issue, the parties are expected to confer and to propose alternate dates prior to making the request.
- B. The Intermediary may object to the request in writing, stating the reasons for its objections, within thirty days from the date of the Provider's request.
- C. If the Board grants the request, the parties are expected to be ready for the hearing with no postponements and to meet other accelerated deadlines for position papers and exchange of information.

Rule 30 – Joint Status Report

In certain cases, typically those that have been rescheduled for hearing at least twice, the Board may require the parties to submit a joint status report addressing one or more of the following:

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1. A summary of activity since the last communication with the Board including dates and details of significant communications.
2. A summary of any partial resolutions and stipulations reached.
3. An estimate of the time and summary of actions needed to reach a final resolution, including identification of the individuals or positions responsible for those actions.
4. If the parties are not currently engaged in settlement discussions, the report should so state and the parties may be required to submit the following information:
 - a. Issues remaining in dispute, including jurisdictional issues.
 - b. Statement of legal issues that the Board must decide.
 - c. Statement of undisputed material facts.
 - d. List of disputed material facts.

The Board may also invite the parties to furnish proposed resolutions.

The Provider shall be responsible for making the initial contact with the Intermediary regarding development of the joint status report.

If the Intermediary fails to communicate with the Provider to produce the report, the Provider is to independently file a report and the Intermediary's failure will be reported to CMS as a failure of contractor compliance with the Board's orders.

If the Provider fails to file a timely response, the Board will assume that the Provider no longer wishes to pursue its appeal and the Board will dismiss the case.

Rule 31 – Ex-Parte Communications Prohibited

It is improper to communicate with the Board or its staff concerning the merits of a case pending before the Board unless all parties are included in the communication. Merits include any matters concerning the facts or the position of a party and may include procedural as well as substantive matters. (For example, a communication to the Board or staff that a party believes the opponent will settle if the case is set for hearing is improper). All communications from any party or other person, including CMS, the Department of Justice or the Office of the Inspector General, about a case pending before the Board must be in writing and must indicate that copies have been served on all parties. The Board will document and notify other parties of any improper communications. All communications (except internal communications reflecting Board

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deliberations, which are privileged) become a part of the permanent record, including notations of any improper communications.

Rule 32 – Communications or Filings Applicable to Multiple Cases

Correspondence or documents filed with the Board that relate to more than one case must be sent in multiple copies, one for each case file.

Rule 33 -- Requesting Expedited Judicial Review After Filing the Appeal

Requests for EJR subsequent to filing the appeal are to be identified in the reference line of the letter and must contain the information as required by Rule 3.6.

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